IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1715 OF 2006

Sadanand Bapusheth Mandlik
& Others. .. Petitioners.

vs.

Municipal Corporation of
Greater Mumbai & Ors. .. Respondents.

Ms. Rajani Iyer a/w Mr. D.A. Athavale
for petitioners.
Mr. K.K. Singhvi a/w Mrs. P.A. Purandare
for Respondent no. 1.
Mr. V.A Thorat a/w Mr. A.J. Rege for R. No. 2.
Mr. D.H. Mehta i/by Mr. V.V. Kulkarni
for Respondent No. 3.

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Coram: J.N. PATEL, ACTING C.J. &,
S.C. DHARMADHIKARI, J.
Date: 8th March, 2007.

P.C.

. Heard the learned counsel for the parties.

2. The petitioners have approached this Court on

the basis of the facts stated in the petition alleging that the respondents particularly respondent no. 2 has adopted dubious means in order to entrust the work of development of the market which is known as Swatantravir Savarkar Mandai in favour of respondent no. 3 and, therefore, this Court should take upon itself to examine the records of the 1st respondent pertaining to the said redevelopment proposal/application submitted by the 2nd respondent and quash and set aside the purported consent letters of the licensees and as a consequence of which the purported proposal of the 3rd respondent.

3. On behalf of the respondents it has been contended that the petitioners have otherwise no locus standi in the matter as 70% of the licensees are with respondent no. 2 who have assigned redevelopment project of the Swatantravir Savarkar Mandai to respondent no. 3 which was duly verified by respondent no. 1 and that after being satisfied they have been permitted to do so.

4. The learned counsel for the petitioners pointed out to us certain glaring instances by referring to the affidavit and the notings filed in support of the petition that the petitioners have adopted dubious means in obtaining the consent of the licensees.

5. It is submitted that after obtaining the

required information from the records of the Municipal Corporation even the officials of the Municipal Corporation have felt that the matter requires reverification in the given fact situation and, therefore, there is no reason why the development project initiated by respondent no. 3 should not be quashed and set aside.

6. The learned counsel for respondent no. 2 has pointed out to this Court that the petitioners have manipulated some of the licensees in their favour to support their cause and that there has been no illegality or irregularity adopted by respondent no. 2 for obtaining the sanction for redevelopment from respondent no. 1 which has been carried by respondent No. 2 Mandal through respondent no. 3.

7. Mr. Singhvi, the learned Senior Advocate, appearing for respondent no. 1 Municipal Corporation, submitted that the Municipal Corporation has after due verification and on being satisfied from the record placed before it has granted approval to the development project presented by respondent no. 2 Mandal.

8. We find that if this Court intervene to examine what is sought for by the petitioners it would be conducting an enquiry into the disputed questions of facts. Petitioners have been able to point out from

the record and from the noting obtained from Asstt. Engineer of respondent no. 1 regarding the subject matter of redevelopment of existing municipal market, which is the subject matter of this petition, who had occasion to scrutinize the documents, and in his noting which is filed as Exhibit "C" to the rejoinder to the affidavit in reply filed by respondent no. 1 B.M.C. that the said Asstt. Engineer did submit to the D.M.C.(Spl.)/A.M.C. (E.S.) for orders on following:-

1. To check the support of 70% licensees by checking with individual signatories through Head Inspector and A.S.M.(II).

2. To verify the notitarisation done by the Association.

3. To issue Annexure-II at the present stage.

It is the case of the respondent B.M.C. that after undertaking this exercise the claim of the Respondent No. 2 has been found to be in accordance with the requirements and that is how the scheme was approved.

9. It is further contended by the learned Senior Advocate for the petitioner that though the documents on the basis of which signatures appear to

be given, the same were obtained on misrepresentation made to the members that the signatures were obtained for obtaining licence forms which, according to the respondent no. 2, were already filled in three years back and looking at the nature of documents it would demonstrate that the members who executed the documents were well aware the purpose for which the same were being executed.

10. Therefore, in this fact situation, we dispose of this petition with a direction to the petitioners to make a representation to the Municipal Corporation of Greater Bombay raising all the issues which are contended before this Court and on such a representation being made within two weeks from today, the Municipal Commissioner would endorse the representation to the Additional Municipal Commissioner who looks after markets and estates division to consider the representation on its own merits for the purpose of verifying the claim and counter claim made by the parties in this regard and take a decision in the matter by passing a speaking order. We direct the Respondent No. 1 to take the decision on the representation within a period of six weeks from the first appearance of the parties before it.

11. Needless to say that the Addl. Municipal Commissioner to whom the representation of the

petitioners would be entrusted, will follow the rules of natural justice and give fair opportunity of hearing to both the sides in support of their respective cases. We further make it clear that if any party do not co-operate, it will be open to the Additional Commissioner to proceed with the matter after recording such non-cooperation on their behalf. The decision taken by the Additional Municipal Commissioner in this matter would be treated as final.

12. Petition stands disposed of accordingly. No order as to costs.

13. We are confident that the Additional Municipal Commissioner who will be dealing with the matter, would not be influenced by any observations made by this Court while disposing of the petition as we have already expressed that he should consider the representation made by the petitioners on its own merits.

14. Parties to act on an ordinary copy of this order duly authenticated by the Private Secretary of this Court.

(J.N. Patel, Acting C. J.)

(S.C. Dharmadhikari, J.)